

IN THE REGIONAL COURT DIVISION EASTERN CAPE
HELD AT PORT ELIZABETH

CASE NO. RC4/11/81

DATE: 26.2.81

THE STATE versus:

1. G.J.E.G. BERGER
2. D. PILLAY

BEFORE:

MR. J.B. ROBINSON

FOR THE STATE:

ADV. J. JURGENS
MR. P. CROUS

FOR THE DEFENCE:

ADV. D. KUNY

CHARGES:

AS PER ANNEXURE

CONTRACTORS:

LUBBE RECORDINGS (PORT ELIZABETH)

VOLUME 8

(Page 591 - 600)

BELT 92.

DN 26.2.81.

PROSECUTOR: At this stage we would like to thank Your Worship for the indulgence this morning. At this stage I ask, and it has been agreed between the State and the Defence, to ask for a postponement of the matter until tomorrow morning. There are developments, Sir, and we are discussing certain aspects.

COURT: Is that correct, Mr. Kuny?

MR. KUNY: That is correct, Your Worship.

COURT: You support the application? (10)

MR. KUNY: Yes I do, Sir.

COURT: The application will be granted. The matter is postponed then until tomorrow, the 27th February.

DN 27.2.81.

MR. KUNY: Sir when the matter adjourned yesterday, Accused No.1 was in the witness-box in the trial within a trial in relation to his statement that was made before a Magistrate and handed in by my Learned Friend. Since that time and we are indebted to Your Worship for the adjournments that were granted, various discussions have taken place between my Learned Friend and ourselves and between ourselves and the accused, as a result of which the accused at this point of time are changing their pleas in respect of certain of the counts before the Court. I have indicated this to my Learned Friends who are aware of this and they have indicated that subject to the basis of the pleas being set out in statements which are to be handed to Your Worship in terms of Section 112 of the Criminal Procedure Act, they would be prepared to accept those changes of plea and withdraw certain of the counts. Your Worship the changes of plea are as follows ... (Prosecutor intervenes)

PROSECUTOR: (Inaudible)

MR. KUNY: Yes, my Learned Friend points out that we are in the

/ process ...

process of dealing with the trial within the trial. In the circumstances, may I say at this stage - I had intended to say so at a later stage, that Accused No.1 withdraws, at this point, his opposition to the statement which my Learned Friend handed in - I think it was EXHIBIT N, and on that basis Sir, it will not be necessary to proceed with the trial within a trial and of course in that matter certain allegations and counter-allegations were made by the accused and by my Learned Friend in cross-examining the accused. These have not been canvassed in full and at this point it won't be necessary for Your Worship to make any finding in this regard and those facts in that evidence is really neutral. As far as the pleas are concerned, Your Worship, Accused No.1 ..(Prosecutor intervenes) (10)

PROSECUTOR: Your Worship I then formally make the application that the statement be admitted.

COURT: The statement will then be admitted. I think it is EXHIBIT N, you said.

MR. KUNY: Accused No.1, Your Worship, tenders pleas of GUILTY then on Counts 1, 2, 4 ..(Court intervenes)

COURT: Just one moment. You say Counts 1 ...? (20)

MR. KUNY: Yes. I'm going to tell Your Worship in a moment the basis on which those pleas are being tendered. But I would place on record it is Count 1, 2...(Court intervenes)

COURT: The main count on Count 2?

MR. KUNY: Yes, the main count on Count - it is the main count of Court 2. Yes, the main count. 4, 5 and 6.

COURT: And his plea of not guilty still stands in regard to Counts Nos. 3 and 7.

MR. KUNY: Yes. And Accused No.2 similarly pleads GUILTY to Counts 1, 2, the main count, 4, 5 and 6. That means that his plea of not guilty on Count 3 stands and Count 7 didn't apply to him

/ in ...

in the first place. Now my Learned Friend has in his possession a copy of the statement which it is proposed to place before the Court in terms of Section 112 on behalf of each of the accused because that sets out the basis on which these pleas are being tendered.

COURT: Is that a written statement being handed in by the Defence?

MR. KUNY: That is so, each one of them signed by the respective accused.

COURT: Two statements?

MR. KUNY: Two statements, one by each, Your Worship. The point is that it is not each and every allegation contained in the indictment that is being admitted or conceded but only certain of the allegations and on a certain basis, as set out in these documents. And I propose, Sir, to hand these documents to Your Worship in terms of Section 112 and to read them into the record. The first one is the statement by Accused No.1.

"1. Ad Count 1:

The accused acknowledges that by reason of Section 12(1) of Act 44/1950, he is presumed to have been a member of the African National Congress (A.N.C.) in that he distributed the documents or publications referred to in Schedule A being items 1, 6 and 10.

The accused, however, denies that he was in fact a member of the A.N.C.

2. Ad Count 2:

(a) The accused admits that

(i) he agreed with Pete Richer to obtain information regarding FOSATU to convey such information to Richer for SACTU;

(ii) he obtained the information referred to in the evidence of the witness Aschine and obtained

information from one Sauls and furnished this information to Richer in Botswana;

(iii) part of the reason for going to Botswana on one trip was to furnish Richer with the information obtained;

(iv) he supplied Richer with the names and pen sketches of persons who might be of use to Richer in obtaining information for Richer;

(b) The accused admits that he lent or otherwise placed in possession of or made known the following items on Schedule A to the persons mentioned below, namely:-
Item 1 - "

I needn't read the details, Your Worship. Items 1, 5, 6, 7, 8 and 10 on Schedule A.

"(c) The accused admits that he initiated and organised and attended the discussion group in 1979 referred to in paragraph 16 of the further particulars and in June 1980 he organised a discussion group referred to in paragraphs 25, 26 and 27 of the further particulars in the manner there set out and personally attended the first two meetings of such group and that the subject matter referred to in paragraph 28 save for Item (b) constituted the topic for discussion at one or more such groups or meetings."

I think that should be "topics" perhaps, Your Worship.

COURT: You ask that it be amended to "topics"?

MR. KUNY: As Your Worship pleases.

"(d) The accused admits that he advised Watters to set up a discussion group in East London and suggested topics for discussion and the names of persons;

(e) The accused admits that by performing such acts or activities set out in (a), (b) and (c) he carried on

in the indirect interest of the ANC acts/activities in which the ANC could have been engaged as at the date on which it was declared an unlawful organisation.

3. Ad Count 4:

SCHEDULE E.

1. The accused admits that he distributed the following documents after they had been declared undesirable in terms of the Publications Act viz:
 - (a) 3 Extracts from "A.N.C. speaks" to M.T. Kenyon in June 1980 (being items 4, 5 and 6 of Schedule E);
 - (b) 2 Extracts from "A.N.C. speaks" to A. Hill in June 1980 (being items 13 and 14 of Schedule E).
2. The accused admits handing items 1, 2, 3, 7 and 11 to the persons alleged but denies he knew or should have known that they had been declared undesirable.

4. Ad Count 5:

SCHEDULE F.

The accused admits that he handed one photocopy of extracts from two issues of Sechaba to L. McGregor for handing to Z. Jaffer in Cape Town in July 1980 after the distribution of Sechaba had been prohibited.

5. Ad Count 6:

SCHEDULE G.

The accused admits that on Monday 11th August 1980 he was in possession of the following items after they had been prohibited for possession viz: Items 3, 4, 5, 8, 9, 12 and 14." That is of Schedule G.

PROSECUTOR: Your Worship if I may just indicate at this stage ^{are} that these acceptable to the State, I will say so after my Learned Friend has also dealt ...(Court intervenes)

COURT: I can't hear you?

PROSECUTOR: May I just at this stage draw my Learned Friend's attention to paragraph (e) Ad Count 2. "The accused admits that by performing such acts or activities set out in (a), (b) and (c)", it should be (a), (b), (c) and (d).

MR. KUNY: That is correct, Sir. That was an omission from the typist.

COURT: Shall I amend it accordingly? I must amend it accordingly if you are ad idem about that.

MR. KUNY: Well then I get on to reading the statement made by Accused No.2.

"1. Ad Count 1 ..."

This is in similar terms to the statement in Accused No.1's statement.

"The accused acknowledges .." it should be. No "acknowledged. "that by reason of Section 12(1) of Act 44/50 he is presumed to have been a member of the African National Congress (A.N.C.) in that he distributed the documents or publications referred to in Schedule E being items 24, 27 and 32. The accused however denies that he was in fact a member of the A.N.C.

2. Ad Count 2

The accused admits:-

- a) That he introduced "Raj" to Kenyon and Pobana with a view to the said Raj speaking to Kenyon and Pobana about the A.N.C. in such a manner as would increase their awareness or knowledge of the A.N.C.
- b) That from his discussions with Raj, he assumed that Raj could have had some connection with the A.N.C.
- c) That he knew that Raj's real name was "Singerham" or (Lingham) and that at the request of Singerham, he introduced him to people by the name "Raj".

/ d) ...

COURT.

- d) That he agreed with Raj on the use of a code whereby Raj could continue to communicate with him secretly after the "Raj" had left South Africa ..." and I think my Learned Friend wants to put in there "to return to London".

COURT: Shall I amend it there? "Had left South Africa to ..."?

MR. KUNY: "To return to London".

MR. KUNY: " ... although this code was never in fact used and it was not brought into operation.

- e) That he gave or played a tape recording of Oliver Tambo - New Year Message - to the various persons mentioned in items 1, 4, 7, 11, 13, 15 and 18 of Schedule B.
- f) That he handed out and or distributed the books and or documents mentioned in Schedule B items 2, 5, 6, 8, 9, 14 and Schedule F items 1, 2 and 4.
- g) That Raj suggested that a demonstration be held against the Rugby match to be played between the visiting Lions Side and Border in East London, but that after discussing this suggestion with three persons, the accused decided that it was not a good idea and did not pursue the suggestion.
- h) The accused himself, prior to meeting Raj, had considered staging a boycott of the S.A. Indian Council elections and that he subsequently discussed this with Raj who was in agreement with this idea. However, after approaching and discussing it with various other persons, the accused abandoned his attempts to organise such a campaign, and no campaign took place.

And by performing such acts and activities as set out above ..." and perhaps one could specify there, to make it absolute-

/ ly ...

ly clear, "set out in paragraphs (a) to (h) above"

COURT: "As set out in paragraphs (a) to (h) above".

"... the accused carried out in the direct and/or indirect interest of the A.N.C. acts and activities in which the A.N.C. could have been engaged as at the date on which it became an unlawful organisations.

3. Ad Count 4 Schedule E

The accused admits that he distributed the following items after they had been declared undesirable in terms of the Publications Act, viz items 20, 21, 24, 25, 27, 28, 32 and 35 (items 24, 27 and 32 being part of the same publication)

4. Ad Count 5 Schedule F

The accused admits that he distributed items 1, 2 and 4 of this Schedule to the persons alleged herein after the distribution had been made known ..." no, that can't be correct. I should be "after the prohibition of the distribution had been made known."

"... the publication "Sechaba" being the same edition in each instance." It is not very elegantly worded by I think says what has to be said, Sir.

"5. Ad Count 5 Schedule G

The accused admits that he had in his possession the following items after they had been prohibited for possession." Not "possessions".

"Items 16, 18, 19, 21, 22, 24, 25, 26, 27, 28, 29 (items 16, 24, 25 and 29 being portion of the same publication."

COURT: What will be the next two exhibit numbers, Mr. Prosecutor?

PROSECUTOR: Your Worship we have progressed to Exhibit P but so far Your Worship has admitted the Section 115 statement and the admissions as annexures to the charge sheet and not as exhibits. The last one was F - oh no, G, so this would be "H" and "J".

/ Court ...

COURT: Annexures, yes.

COURT TO ACCUSED: Mr. Berger do you confirm what Counsel has told the Court? --- Yes, Your Worship.

And you Mr. Pillay, do you also confirm what your Counsel has told the Court? Do you confirm the statement and also the changes of plea? --- Yes.

Both accused confirm that to be the position.

COURT: Mr. Prosecutor and Mr. Kuny, I have not been involved - obviously - in these discussions. I would like to study these documents, these statements made in terms of Section 112 before proceeding any further with the matter and I think that for that purpose it would be advisable that the matter be postponed.

MR. KUNY: I was going to suggest to Your Worship, after discussion with my Learned Friend that the matter be postponed until Monday morning, although it may be that on Monday morning we will require certain further time in order to conduct consultations in connection with the next portion of the case. But in any event, at this stage, Your Worship, may I ask you formally to postpone until Monday morning at 9.

COURT: I had in mind postponing it until Tuesday but I take it you ..(interrupted)

MR. KUNY: Well (indistinct) the accused need to be brought to Court on Monday.

COURT: Well fine, for that reason although it must be understood that I probably will not be ready to continue on Monday.

PROSECUTOR: Your Worship, I may just add that we may as well postpone the matter to Tuesday. I will make the necessary arrangements that the accused be requisitioned and be brought to Court.

COURT: Would that suit you, Mr. Kuny?

MR. KUNY: That is fine. I thought that the only way to have them brought to Court was to postpone it until Monday.

COURT: No, if we can do it that way I will probably be better. It

/ will ...

COURT.

will obviate the Court specially having to sit on Monday just to do a remand again. The matter is then postponed Monday, the - Tuesday, the 3rd.

PROSECUTOR: Your Worship, subject to your Worship's finding the pleas as tendered as acceptable, the State will accept all the pleas and in doing that the State will of course accept those pleas as tendered. That is course, subject to Your Worship --- (interrupted)

COURT: I think we can follow that up on Tuesday. I don't know why you are raising the point at the moment.

PROSECUTOR: My Learned Friend has asked me to just - to place my agreement on record.

COURT: In other words you indicate that you intend accepting the pleas subject to what the Court finds and that includes the plea - eventually the plea of not guilty?

PROSECUTOR: Yes.

COURT: Is that the position? You just wanted that assurance, Mr. Kuny?

MR. KUNY: I wanted that on record at this stage. My Learned Friend did indicate it earlier but perhaps ...(Interrupted)

COURT: The normal procedure is that after the Court has made certain significations that the prosecutors then normally do it. But I can see you might feel your clients want some assurance that their pleas on the other counts are going to also be accepted if these are accepted.

MR. KUNY: I don't think they have any misgivings in this regard. I (indistinct) to my Learned Friend.

CASE POSTPONED TO 3.3.81.

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